

APPEAL NO. 040805
FILED MAY 24, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 16, 2004. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first and second quarters; that the claimant was not entitled to SIBs for the third through eighth quarters (based on a different theory than the first two quarters); that the claimant has permanently lost entitlement to income benefits pursuant to Section 408.146(c); that good cause does not exist to relieve the claimant from the effects of a Benefit Dispute Agreement (TWCC-24); and that the claimant's compensable injury of _____, does not include a depressive disorder.

The claimant appeals, contending that he is entitled to SIBs because his treating chiropractor (and other doctors) had taken him off work, that he should be relieved of the effects of the TWCC-24 because he had been "tricked" by the respondent (carrier), and that his compensable injury should include a depressive disorder. The carrier responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable left shoulder and neck injury on _____. The hearing officer, in her Statement of the Evidence, lays out the timeline of treatment and events in some detail and that will not be repeated here.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant asserts entitlement to SIBs for the first and second quarters on the basis of a return to work in a position relatively equal to his ability to work (see Rule 130.102(d)(1)). During the applicable qualifying periods the claimant had returned to work full time at a wage that exceeded his preinjury wage and thereby was not entitled to SIBs pursuant to Section 408.142(a)(2) and (b)(1) and Rule 130.102(b)(1).

During the third quarter qualifying period the claimant drew unemployment benefits but failed to document any job search efforts. See Rule 130.102(d)(5) and (e). Basically the claimant asserts entitlement to SIBs for quarters three through eight on the basis of a total inability to work. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured

employee is able to return to work. The hearing officer commented that during all of the qualifying periods at issue, the claimant did not produce narrative medical reports specifically explaining how the compensable injury causes a total inability to work which would satisfy the requirement of Rule 130.102(d)(4) and further that during the last two qualifying periods there were other records that showed that the claimant could work in some capacity. Conclusory off-work slips or Work Status Reports (TWCC-73) without further explanation do not provide the specific narrative required by Rule 130.102(d)(4).

The claimant asserts that he had good cause to be relieved of the effects of the TWCC-24 dated April 8, 2003, in which the parties agreed that the compensable injury includes cervical disc injuries at C5-6 and C6-7 but does not include a depressive disorder. The claimant had been diagnosed as having depression in November 2002; that diagnosis had been disputed by the carrier and a Texas Workers' Compensation Commission (Commission)-required medical examination (RME) doctor in a report dated March 17, 2003, gave the opinion that the claimant's depression was due more to his lifestyle than his work-related injury. The claimant contends that he should be relieved from the effects of the TWCC-24 because he was "tricked" by the carrier. Exactly how the claimant believes he was tricked is not clear other than the claimant apparently believed that he would be getting SIBs for the accepted cervical injury. The hearing officer's determination regarding the TWCC-24 is supported by the evidence.

Regarding whether the compensable includes depression (aside from the TWCC-24), there was conflicting evidence. The hearing officer's determination is supported by sufficient evidence in the form of the Commission's RME doctor's report.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Veronica Lopez
Appeals Judge